

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS DICKSTEIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1968, 1969 and 1970.

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of April , 19 77 he served the within  
Notice of Decision by (certified) mail upon Louis Dickstein

(~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Mr. Louis Dickstein  
108-20 65th Avenue  
Forest Hills, New York 11375

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~  
~~of the~~) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

14th day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS DICKSTEIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1968, 1969 and 1970.

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of April, 1977, he served the within  
Notice of Decision by (certified) mail upon Bertrand Leopold

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Bertrand Leopold, P.A.  
18 Joseph Street  
New Hyde Park, New York 11040

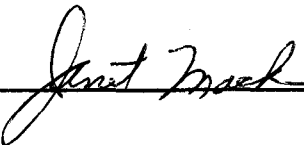
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative  
of the) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (representative of the) petitioner.

Sworn to before me this

14th day of April, 1977.

Bruce Batchelor





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 8, 1977

TELEPHONE: (518) **457-1723**

Mr. Louis Dickstein  
108-20 65th Avenue  
Forest Hills, New York 11375

Dear Mr. Dickstein:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(x) **722** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

**Paul E. Coburn**  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
LOUIS DICKSTEIN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years	:	
1968, 1969 and 1970.	:	

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Petitioner, Louis Dickstein, residing at 108-20 65th Avenue, Forest Hills, New York 11375, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969 and 1970. (File No. 13146).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, October 21, 1976 at 9:15 A.M. The petitioner appeared by Bertrand Leopold, Public Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq. (Arthur R. Rosen, Esq., of counsel).

#### ISSUES

I. Whether the petitioner was an employee, exempt from the imposition of unincorporated business income tax, or an independent contractor subject to unincorporated business tax.

II. Whether reasonable cause exists for petitioner's failure to file unincorporated business tax returns.

FINDINGS OF FACT

1. The petitioner, Louis Dickstein, filed personal income tax returns for the years 1968, 1969 and 1970, but did not file unincorporated business tax returns for said years.

2. On March 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Louis Dickstein, imposing unincorporated business tax on income received by him from his activities as a multi-line salesman during the years 1968, 1969 and 1970. Accordingly, the Income Tax Bureau issued a Notice of Deficiency against him in the amount of \$1,858.62, plus a penalty of \$607.65 and interest of \$348.22, for a total of \$2,814.49.

3. During the years in issue the petitioner, Louis Dickstein, was a ladies' handbag salesman selling leather, cloth and novelty handbags for three unaffiliated firms. The products for each firm were noncompetitive. His territory covered the southeastern and southwestern United States. He did not have any employees. The firms for whom Mr. Dickstein sold merchandise did not withhold Federal or New York State income taxes or social security. The petitioner was paid by his principals on a straight commission basis on merchandise orders accepted and shipped by them. He was not reimbursed by any of his principals for his business expenses. He was covered by a self-employment pension plan, i.e., a Keogh Plan. The petitioner represented Jax Handbag Sales, Inc., Saber Handbag Co., Inc. and Sterling

Handbag Co., Inc. Approximately two-thirds of petitioner's commission income was earned from Jax Handbag Sales, Inc. On his 1969 Federal Schedule "C", the petitioner deducted business expenses of \$14,158.57, which included depreciation on an adding machine and \$180.00 "rent on business property".

4. There was no agreement among petitioner's principals as to the division of his time or efforts on their behalf. The petitioner endeavored to sell the various products of all his principals to the same customers.

5. The Unemployment Insurance Appeal Board issued a decision on February 1, 1973, reversing the decision of the referee in which it was determined that the petitioner and another salesman were employees of Jax Handbag Sales, Inc. for the period from April 1967 to September 1970, pursuant to the provisions of Article 18 of the Labor Law.

6. The firms for which the petitioner sold merchandise did not exercise any substantial supervision or control over his sales activities or techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

7. The petitioner was advised by his accountant that he was not subject to unincorporated business tax and not required to file unincorporated business tax returns. He relied on said advice.

CONCLUSIONS OF LAW

A. That the income received by the petitioner, Louis Dickstein, from the firms he represented during the years 1968, 1969 and 1970 constituted income from his regular business of selling ladies' handbags, and not compensation as an employee exempt from the imposition of the unincorporated business tax, in accordance with the meaning and intent of section 703(b) of the Tax Law.

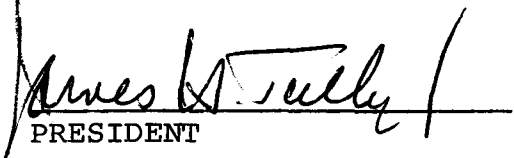
B. That the aforesaid activities of the petitioner, Louis Dickstein, during the years 1968, 1969 and 1970 constituted the carrying on of an unincorporated business. His income derived therefrom was subject to the unincorporated business tax, in accordance with the meaning and intent of section 703 of the Tax Law.


C. That the penalties imposed pursuant to section 685(a)(1) and (2) of the Tax Law are hereby cancelled on the basis of Finding of Fact "7", supra.

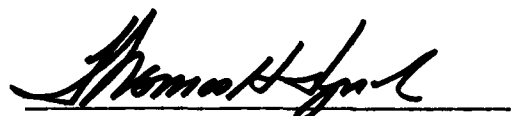
D. That the petition of Louis Dickstein, except as modified above, be and the same is hereby denied.

DATED: Albany, New York  
April 14, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER